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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

William James Mesa, Jr.,
Plaintiff,

v.

Charles L. Ryan, et al.,
Defendants.

No. CV 17-03039-PHX-DGC (MHB)

ORDER

Plaintiff William James Mesa, Jr., who is currently confined in the Arizona State Prison Complex-Lewis, brought this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) The Parties cross-move for summary judgment.¹ (Docs. 21, 25.)

I. Background

In his Complaint, Plaintiff alleged as follows. In 2007, Plaintiff injured his lower back, and the doctor who saw him created a treatment plan of stretching, losing weight, and purchasing Ibuprofen 200 mg. (Doc. 1 at 5.) In 2014, Plaintiff's condition grew worse, and he collapsed and lost mobility for a short period of time. (*Id.*) Nurse Practitioner (NP) Taylor ordered x-rays and an MRI, insoles for Plaintiff's shoes, and prescribed 300 mg of Gabapentin nightly while awaiting the test results. (*Id.* at 5-6.) In 2016, Plaintiff received his MRI results, which showed a bulging herniated disc and torn discs. (*Id.* at 6.) When Plaintiff submitted a Health Needs Request (HNR) requesting an increase in his

¹ The Court provided notice to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (en banc), regarding the requirements of a response. (Doc. 23.)

1 Gabapentin, a medical wedge, a new mattress, and shoes, Elijah ordered a blood test to
2 check the levels of Gabapentin in Plaintiff's system due to the Arizona Department of
3 Corrections (ADC) policy to reduce the number of inmates prescribed Gabapentin. (*Id.*)
4 Elijah ignored the laboratory's warning to consider a person's height and weight when
5 reviewing the results, and concluded that the results showed a low level of Gabapentin in
6 Plaintiff's system. (*Id.*) Based on the results, Elijah discontinued Plaintiff's Gabapentin
7 and his pain worsened. (*Id.*) After repeated attempts to have his pain dealt with, Defendant
8 Elijah ignored all requests by Plaintiff for pain management and prescribed stretching,
9 losing weight, and purchasing Ibuprofen 200 mg. (*Id.* at 8.)

10 On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated
11 an Eighth Amendment claim based on deliberate indifference to serious medical needs
12 against Defendant Dr. Elijah. (Doc. 6.) The Court dismissed the remaining claims and
13 Defendants. (*Id.*) The Parties now cross-move for summary judgment.

14 **II. Summary Judgment Standard**

15 A court must grant summary judgment "if the movant shows that there is no genuine
16 dispute as to any material fact and the movant is entitled to judgment as a matter of law."
17 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The
18 movant bears the initial responsibility of presenting the basis for its motion and identifying
19 those portions of the record, together with affidavits, if any, that it believes demonstrate
20 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

21 If the movant fails to carry its initial burden of production, the nonmovant need not
22 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,
23 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts
24 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in
25 contention is material, i.e., a fact that might affect the outcome of the suit under the
26 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable
27 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
28 242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th

1 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its
2 favor, *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,
3 it must “come forward with specific facts showing that there is a genuine issue for trial.”
4 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal
5 citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

6 At summary judgment, the judge’s function is not to weigh the evidence and
7 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,
8 477 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence and draw
9 all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited
10 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

11 **III. Facts²**

12 On August 27, 2015, Plaintiff had x-rays of his lumbar spine which showed
13 satisfactory alignment of the vertebral bodies and well-maintained disc spaces, except at
14 L5-S1. (Doc. 22 ¶ 1.) The results showed “[m]inor degenerative joint disease [] in lower
15 lumbar spine and disc degenerative at LS junction.” (*Id.*) Thereafter, Plaintiff was
16 diagnosed with lumbago (low back pain) and lumbosacral disc degeneration. (*Id.* ¶ 2.)
17 Plaintiff started receiving an afternoon dose of Gabapentin for low back pain in September
18 2015. (*Id.* ¶ 3.)

19 On February 20, 2016, Plaintiff had an MRI of his lumbar spine which revealed
20 “multilevel narrowing of the spinal canal and neural foramina . . . most prominent at L3-
21 4, L4-5, L5-S1[,], annular tears at L4-5 and L5-S1[,], multilevel degenerative changes[, and]
22 Grade 1 retrolisthesis of L5 over S1.” (*Id.* ¶ 4; Doc. 22 at 44-46.) Subsequent lumbar x-
23 rays taken on May 26, 2016, revealed the same results as those taken on August 27, 2015—
24 minor degenerative changes in the lower spine and disc degeneration at the LS junction.
25 (*Id.* ¶ 5.)

26
27 ² Plaintiff makes various objections to Defendant’s asserted facts. (*See generally*
28 Doc. 26.) The Court has considered Plaintiff’s objections, but where Defendant has
presented evidence supporting the asserted fact, and Plaintiff has failed to controvert the
asserted fact with any evidence, the Court has set forth the fact as asserted by Defendant.

1 Dr. Elijah is employed as a physician by Corizon Health and worked at ASPC-
2 Lewis, Barchey Unit, between September 2016 and April 2017. (*Id.* ¶ 6.) Elijah had two
3 encounters with Plaintiff and both were related to his lower back pain complaints. (*Id.* ¶ 7.)

4 Prior to meeting with Plaintiff, Elijah reviewed an HNR in which Plaintiff requested
5 an increase in his Gabapentin prescription for chronic back pain. (*Id.* ¶ 18.) Gabapentin is
6 highly regulated in the correctional setting because it is addictive and the potential for
7 abuse, misuse, and diversion is significant. (*Id.* ¶ 19.) As a result, Corizon was carefully
8 monitoring inmate Gabapentin prescriptions, and Elijah was told by several staff members
9 and inmates that Gabapentin was being sold, traded, and given away on the Lewis yard.
10 (*Id.* ¶ 21.) Corizon instituted a practice that inmates on Gabapentin would undergo periodic
11 and random lab tests to ascertain their blood levels of the drug, that levels at or above 2.0
12 were deemed therapeutic, and that levels below 2.0 were deemed untherapeutic or
13 inadequate. (*Id.* ¶ 22.)

14 On September 29, 2016, Elijah ordered the Gabapentin serum blood test on Plaintiff,
15 which was taken on September 30, 2016, 20 hours after his last dose. (*Id.* ¶ 23.) At that
16 time, Plaintiff was taking 600 mg of Gabapentin per day. (*Id.* ¶ 24.) Plaintiff's blood level
17 came back as 0.79 and was flagged as "below low normal." (*Id.* ¶ 25.) Elijah opines that
18 given the high dose of Gabapentin and the length of time he was on the medication,
19 Plaintiff's blood levels should have been well within the normal range, but were instead
20 within the non-therapeutic range. (*Id.* ¶¶ 26-27.) As a result, Elijah discontinued Plaintiff's
21 prescription for Gabapentin on October 6, 2016. (*Id.* ¶ 28.)

22 At the time, Plaintiff had an active prescription for Naproxen, 500 mg, twice daily,
23 to treat his low back pain, and Elijah renewed that prescription on October 17, 2016, which
24 Elijah felt, based on her education, experience, and research, should effectively treat
25 Plaintiff's back pain without the possibility of addiction. (*Id.* ¶¶ 29-31.)

26 During his visit with Elijah on November 7, 2016, Plaintiff reported that he suffered
27 from chronic back pain as a result of a previous incident in 2007, with an exacerbation in
28 2015. (*Id.* ¶ 32.) Plaintiff reported that his spine "pops and crackles daily," and that he

1 experienced intermittent pain with bending and bearing weight, and occasional pain with
2 ambulating. (*Id.* ¶ 33.) Plaintiff complained of pain to his left lateral midline, but exhibited
3 no pain or tenderness upon palpation and reported no interference with his activities of
4 daily living; his straight leg test was negative, and Elijah observed that Plaintiff exhibited
5 normal range of motion and was able to bend and twist freely. (*Id.* ¶¶ 34-37.)

6 Elijah noted that Plaintiff was clinically obese at 5'8 and 204 pounds. (*Id.* ¶ 38.)
7 She recommended that he lose weight, exercise, and stretch to strengthen his muscles and
8 reduce pressure and tension on the spine; she provided Plaintiff with handouts on spinal
9 conditioning exercises and stretches to perform in his spare time. (*Id.* ¶ 39.) Plaintiff told
10 Elijah that his previous provider, NP Taylor, had considered a neurosurgery consult to
11 review his MRI and determine whether operative management was indicated. (*Id.* ¶ 40.)
12 Elijah sent NP Taylor an email inquiring about the potential neurosurgery consult and her
13 care plan, but did not receive a response. (*Id.* ¶ 41.) Elijah opines that neurosurgery is
14 rarely indicated for chronic back pain unless the patient experiences progressive
15 neurological deficit, inability to carry out activities of daily living, or severe pain that is
16 uncontrolled despite exhausting nonsurgical management options. (*Id.* ¶ 42.)

17 Elijah opines that based on her education, training, and experience, the best
18 approach to successfully and safely treating low back pain is to teach the patient targeted
19 exercises and stretches he can do to target the source of the pain—as opposed to masking
20 symptoms—and to have the patient make lifestyle changes, such as increased exercise,
21 reduced weight, and reduced smoking. (*Id.* ¶ 13.) Elijah opines that conservative measures
22 are generally preferred for back pain, except in severe cases. (*Id.* ¶ 43.)

23 Elijah did not see Plaintiff between October 2016 and April 2017. On April 25,
24 2017, Elijah saw Plaintiff again for a flare-up of back pain complaints, but Plaintiff
25 reported that he was currently without active pain symptoms. (*Id.* ¶ 45.) Plaintiff reported
26 a flare-up of back pain a week before that had resolved on its own and did not report
27 interferences with his activities of daily living. (*Id.* ¶ 47.) Elijah's exam did not reveal any
28 appreciable abnormalities. (*Id.* ¶ 48.) Plaintiff demonstrated a popping and crackling

1 sensation that he experiences in the low back, which he believed indicated his spine was
2 out of alignment, but in Elijah’s opinion, the sounds were that of cartilage shifting. (*Id.*
3 ¶ 49.) Elijah prescribed Plaintiff Capsaicin cream, a muscle rub, which is known to be
4 effective in treating joint conditions like osteoarthritis for pain flare-ups. (*Id.* ¶¶ 53-54.)
5 Elijah reiterated that Plaintiff should try to stretch, lose weight, and stay active to reduce
6 or eliminate back pain symptoms. (*Id.* ¶ 55.) Elijah did not have any encounters with
7 Plaintiff after her second visit with him in April 2017, and she did not hear that he was
8 experiencing worsening back pain. (*Id.* ¶ 56.)

9 **IV. Discussion**

10 Not every claim by a prisoner relating to inadequate medical treatment states a
11 violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show
12 that the defendants acted with “deliberate indifference to serious medical needs.” *Jett v.*
13 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104
14 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating that failure
15 to treat the condition could result in further significant injury or the unnecessary and
16 wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
17 *Jett*, 439 F.3d at 1096 (quotations omitted).

18 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
19 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both
20 know of and disregard an excessive risk to inmate health; “the official must both be aware
21 of facts from which the inference could be drawn that a substantial risk of serious harm
22 exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).
23 Deliberate indifference in the medical context may be shown by a purposeful act or failure
24 to respond to a prisoner’s pain or possible medical need and harm caused by the
25 indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may also be shown when a
26 prison official intentionally denies, delays, or interferes with medical treatment, or by the
27 way prison doctors respond to the prisoner’s medical needs. *Estelle*, 429 U.S. at 104-05;
28 *Jett*, 439 F.3d at 1096.

1 Deliberate indifference is a higher standard than negligence or lack of ordinary due
2 care for a prisoner's safety. *Farmer*, 511 U.S. at 835. "Neither negligence nor gross
3 negligence will constitute deliberate indifference." *Clement v. California Dep't of Corr.*,
4 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*, 622 F.2d
5 458, 460 (9th Cir. 1980) (mere claims of "indifference," "negligence," or "medical
6 malpractice" do not support a claim under § 1983). "A difference of opinion does not
7 amount to deliberate indifference to [a plaintiff's] serious medical needs." *Sanchez v. Vild*,
8 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is
9 insufficient to state a claim against prison officials for deliberate indifference. *See Shapley*
10 *v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985). The
11 indifference must be substantial. The action must rise to a level of "unnecessary and
12 wanton infliction of pain." *Estelle*, 429 U.S. at 105.

13 Plaintiff saw Elijah two times between October 2016 and April 2017. Elijah admits
14 that she discontinued Plaintiff's Gabapentin, but argues that she based the decision on her
15 medical opinion and did not discontinue the Gabapentin out of deliberate indifference to
16 Plaintiff's serious medical needs. Elijah asserts that Plaintiff's blood test indicated he was
17 not taking the full amount of Gabapentin prescribed to him, that Gabapentin is not normally
18 appropriate to treat chronic back pain like Plaintiff's back pain, and that she believed
19 Plaintiff's back problems could be controlled by stretching, losing weight, staying active,
20 and the other steps that she prescribed. In response, Plaintiff asserts that he had to
21 experience unnecessary and excessive pain because his Gabapentin was discontinued, that
22 there were no allegations made that he misused his Gabapentin, and that Elijah lacked the
23 necessary qualifications to treat lower back pain. (Doc. 26 ¶¶ 58-60.)

24 Although Plaintiff alleges that Elijah wrongfully discontinued his Gabapentin, the
25 evidence in the record shows that Elijah based her decision on her medical opinion that
26 Gabapentin was not appropriate to treat Plaintiff's condition. Although Plaintiff disagrees
27 with her decision, Plaintiff introduces no evidence demonstrating that the decision was
28 unreasonable or was deliberately indifferent to his serious medical needs. Rather, Elijah

1 recommended a conservative treatment plan for Plaintiff, and Plaintiff has not introduced
2 any evidence that the treatment plan was inappropriate.

3 Nothing in the records of Plaintiff's visits to Elijah demonstrate that she was
4 deliberately indifferent to his serious medical needs. Although Plaintiff would have
5 preferred to remain on Gabapentin, there is no evidence in this record that Elijah's decision
6 to discontinue Gabapentin was based on improper reasons outside of her medical opinion.
7 Moreover, although Elijah did not follow-up after e-mailing NP Taylor about Plaintiff, she
8 did not believe a neurosurgery consult was clinically indicated, and the failure to follow up
9 shows negligence at best, not that her failure to follow up was based on deliberate
10 indifference to Plaintiff's serious medical needs. Summary judgment will be granted in
11 favor of Elijah because, on this record, there is no evidence that Elijah was deliberately
12 indifferent to Plaintiff's serious medical needs.³

13 **IT IS ORDERED:**

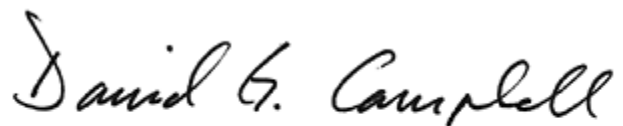
14 (1) Reference to the Magistrate Judge is withdrawn on Defendant's Motion for
15 Summary Judgment (Doc. 21) and Plaintiff's Cross-Motion (Doc. 25).

16 (2) Defendant's Motion for Summary Judgment (Doc. 21) is **granted**.

17 (3) Plaintiff's Cross-Motion for Summary Judgment (Doc. 25) is **denied**.

18 (4) The Clerk of Court must enter judgment accordingly.

19 Dated this 12th day of February, 2019.

20 

21
22 David G. Campbell
23 Senior United States District Judge
24

25 ³ After briefing on summary judgment, Plaintiff submitted a "Supplemental Reply"
26 in which he claims that on September 17, 2018, his back went out and, in response to a
27 request for a long-term plan of action, he was told Corizon was "checking on referral."
28 (Doc. 28.) Plaintiff does not include any allegations against Defendant Elijah, the only
Defendant to this action. The Court, therefore, does not consider this document part of the
summary judgment briefing. To the extent Plaintiff has new claims based on his current
medical complaints, he must file a new complaint in a new action.